

# OPEGA Policy and Procedures Manual

**Policy/Procedure Title:** Confidentiality

**Purpose:** To establish office policy concerning confidential documents and work papers and other data accessed or compiled during a performance audit or program evaluation.

**Authority/Citation:** Title 3, Chapter 37, §991- 997 MRSA  
Title 1, Chapter 13 MRSA

**Policy:** Title 3 §997 authorizes OPEGA to have access to documents, data and other information that is otherwise considered confidential or privileged under Title 1, Chapter 13. The statute also provides for the identities of individuals providing information to be kept confidential in certain circumstances.

During an evaluation, OPEGA staff may need to review documents or obtain data files containing confidential information. Staff may also need to obtain copies of these documents or reference pieces of confidential information in generating work papers that will adequately support OPEGA's evaluation findings. Assuring that confidential information is protected from intentional or inadvertent disclosure is of utmost importance to OPEGA.

## **Accessing Confidential or Privileged Information**

In accordance with the statute, access to confidential or privileged information will be gained by:

- Working with the responsible agency to determine what information related to the review is considered confidential or privileged;
- Submitting a written request to the agency head describing the specific confidential information OPEGA will need to access;
- Obtaining an understanding from the agency as to specific policies and procedures it has established to protect the confidentiality of this information; and
- Coming to agreement with the agency on the specific procedures to be used by OPEGA to access confidential information and maintain the confidential status of that information.

The agreement on specific procedures to be followed will be committed to writing and signed by appropriate agency and OPEGA representatives.

As a general rule, OPEGA will only seek access to that confidential information that is necessary to:

- adequately answer the evaluation questions posed by the Government Oversight Committee when it assigned the review; or
- validate or support a potential finding that has been identified.

In addition, OPEGA will limit the number of OPEGA staff reviewing confidential information to the minimum number necessary to accomplish the work task in a reasonable period of time. Staff assigned to these tasks will be specifically identified in the written agreement with the agency and will acknowledge, in writing, their understanding of the procedures to be used in accessing and maintaining confidential information.

### **Protecting Confidentiality of Information Obtained by OPEGA**

Under Title 3 §997 of the MRSA, all working papers and other materials in OPEGA's possession are confidential during a review. These work papers and other materials remain confidential even after the release of the final evaluation report or the point at which an evaluation is no longer being pursued. Working papers include any background information gathered for producing scoping papers as well as electronic files.

The statute does provide for these working papers and materials to be shared with appropriate representatives of the agency under review at the discretion of the OPEGA Director but not with anyone else. During an evaluation, OPEGA may obtain documents or data from state agencies and may receive public records requests for those records. MRSA Title 3 §997 requires the Director to refer public records requests for such documents or data to the state agency that is the official custodian of the requested records.

In addition to the protections provided by the statute, OPEGA will take the following steps to further protect confidential information it may obtain. These steps and others will be included, as appropriate, in the written agreement between OPEGA and the agency.

- When possible, OPEGA will avoid reviewing or obtaining information that would specifically identify an individual, i.e. names, social security numbers, street addresses and phone numbers. This may be accomplished by leaving these pieces of data out of any data files requested and using other unique identifiers, i.e. case numbers, instead. It may also be accomplished by requesting that the agency redact this type of information from written documents before providing them to OPEGA.
- Electronic files or physical files with documents containing confidential information will be maintained on network drives, hard disk drives or in locked file cabinets accessible only to the OPEGA staff members that have been specifically assigned to work with that information on any particular review.
- If OPEGA does review and/or obtain individually identifying information that could compromise confidentiality, the OPEGA staff member in possession of the confidential information will make every effort to keep such information from being included in the official working papers by redacting it from documents or deleting it from electronic files that comprise those working papers. If possible, the redacting should be done before leaving the agency's premises. The only exception may be if there is no other unique identifier that can be used to trace information in the working paper back to the original source document.
- All project working paper files will be locked in OPEGA file storage cabinets when not under the physical control of an OPEGA analyst or the OPEGA Director.
- Any documents or electronic files containing confidential information obtained by OPEGA will not be removed from the OPEGA office.
- The OPEGA office will be locked whenever there is not at least one OPEGA staff member present.
- After the final report on the evaluation has been issued, at a time determined by the OPEGA Director, the OPEGA analysts will delete, shred or otherwise destroy any electronic files or physical documents containing confidential information that are not part of the official working papers.

- Any working papers that do contain confidential information (including computer disks) and end up being stored with project files will be clearly identified as containing agency records that are designated confidential by law.

### **Protecting the Identity of an Individual Providing Information**

MRSA Title 3 §997 also allows for the identities of individuals providing information for a performance evaluation to be kept confidential. It is not the intent of this statute or OPEGA policy that identities be kept confidential as a matter of course. Rather, an individual's identity may be kept confidential if, in the judgment of the Director in consultation with the appropriate team lead, this action is necessary to protect an individual from: (1) adverse action by his or her employer; (2) other significant financial or economic risks<sup>1</sup>.

Under no circumstances should OPEGA analysts offer confidentiality to interviewees without receiving prior approval. If, during the course of an evaluation, an analyst judges that providing confidentiality to an interviewee would help to accurately and fully complete the evaluation by protecting the individual from either of the effects listed above, the analyst should consult with the team lead to request that confidentiality be provided. The Director will make this determination in consultation with the team lead.

The Director will protect the confidentiality of the individual's identity by writing a memorandum to the file stating that the individual's identity will remain confidential and exempt from disclosure under Title 1, Chapter 13. Notwithstanding any other provisions of the law to the contrary, this will prevent disclosure of the individual's identity to the public, legislators and members of government agencies.

By virtue of the fact that OPEGA's working papers also remain confidential, the information provided by the interviewee will also be considered confidential under MRSA Title 3 §997. It should be noted that, under the statute, the OPEGA Director does have the discretion to share working papers with the agency under review. In these instances, the identity of the individual will continue to be held confidential. In addition, any information on working papers to be shared that could allow anyone to identify the individual will be redacted before being reviewed by the agency. For example, a case or file number may not by itself identify the individual, but the custodian of the case logs or file could use the case number to identify the specific individual. Therefore, the case number should also be redacted. It is recognized that making this determination requires the exercise of discretion. In so doing, the lead, in consultation with the Director, should determine whose identity is being protected, from whom or what, and for what reason. In all cases, care should be taken to ensure, first, the protection of the individual's identity.

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<sup>1</sup> For the purposes of this policy, adverse action means to discharge, threaten, or otherwise discriminate against an employee in any manner that affects the employee's employment, including compensation, terms, conditions, location, rights, immunities, promotions, or privileges.

**Office of Program Evaluation and Government Accountability  
Confidentiality Policy**

**Summary of Actions to Access and Obtain Confidential Information**

**In accessing confidential information, OPEGA will:**

- Work with the responsible agency to determine what information is considered confidential or privileged;
- Submit a written request to the agency head describing the specific confidential information OPEGA will need to access;
- Obtain an understanding from the agency as to its specific confidentiality policies and procedures;
- Come to agreement with the agency on the specific confidentiality procedures to be used by OPEGA; and
- Commit that agreement to a written document signed by appropriate agency and OPEGA representatives, including the specific OPEGA analysts that will be accessing the information.

**As a general rule, OPEGA will:**

- Seek access to confidential information only when necessary to adequately answer the review questions posed or support a finding; and
- Limit the number of OPEGA staff reviewing confidential information to the minimum number necessary.

**In protecting confidential information it obtains, OPEGA will:**

- Treat all information obtained as confidential work papers under the OPEGA statute;
- Avoid, as much as possible, reviewing or obtaining information that would specifically identify an individual;
- Maintain information received on network drives, hard disk drives or in locked file cabinets accessible only to the OPEGA staff members that have been specifically assigned to work with that information;
- Take actions to keep any individually identifying information from being included in the official working papers;
- Lock all project working paper files in OPEGA file storage cabinets when not under the physical control of an OPEGA analyst or the OPEGA Director;
- Not remove any documents or electronic files containing confidential information obtained by OPEGA from the OPEGA office;
- Lock the OPEGA office whenever there is not at least one OPEGA staff member present;
- Destroy any electronic files or physical documents containing confidential information that are not part of the official working papers; and
- Mark project files that do contain confidential information, when they are stored/archived, to clearly identify that those files contain agency records that are designated confidential by law.